

2011-2012 IP Survey Report

**Field Survey on  
Intellectual Property Issues  
in the Process of  
ICH Information Building and Sharing**

**International Information and Networking Centre for  
Intangible Cultural Heritage in the Asia-Pacific Region  
under the auspices of UNESCO**

In collaboration with the Ministry of Cultural Development, Cook Islands

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## *Preface*

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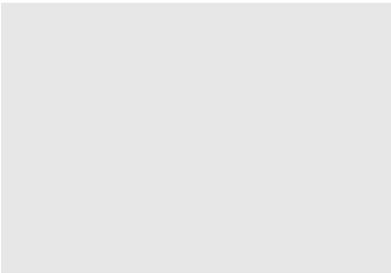
ICHCAP, a UNESCO Category 2 Centre, has carried out activities for safeguarding intangible cultural heritage (ICH) in the Asia-Pacific region with a centralised function in ICH information and networking. In this role, the Centre has worked towards protecting intellectual property rights related to ICH information. The Centre held expert meetings on ICH safeguarding and intellectual property rights in 2009 and 2010, and in 2011, the Centre proposed a project for protecting ICH intellectual property (IP) rights in the process of ICH information building and sharing.

In 2011 and 2012, as part of the new project, field surveys were conducted with the cooperation of ICH information-related institutes in the Asia-Pacific region to examine IP issues that could arise in the process of ICH information building and sharing. The survey was conducted in eleven countries—Cook Islands, Fiji, India, Kazakhstan, Korea, Kyrgyzstan, Mongolia, Pakistan, Philippines, Sri Lanka, and Viet Nam. The purpose of the surveys was to highlight the IP-related problems that ICH-related organisations may encounter while conducting ICH information-related activities, such as identification, documentation, digitisation, etc., and promoting the groundwork for a guide to protect IP-related aspects of ICH in the process of information building and sharing.

For the field surveys, a questionnaire developed by ICHCAP was provided to key organisations, and surveys were carried out by each organisation according to the questionnaire. A research team based in each organisation lead the surveys. Upon completing the surveys, the organisations involved compiled a report. ICHCAP collected the submitted reports and is now making them available in this publication, *Field Survey on IP Issues in the Process of ICH Information Building and Sharing*.

The survey reports from each country are being provided as a resource to exchange experiences related to the IP aspects of ICH information. Also, it is expected that publishing reports can foster an environment to understand and resolve problems related to IP aspects of ICH information in the Asia-Pacific region.





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# ***IP Survey Report***

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# I . Institute Overview

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The Ministry of Cultural Development was set up initially under the title of “Arts and Culture” as announced in the Government’s manifesto in 1989. The main business of the Ministry is the preservation, enhancement and perpetuation of the Cook Islands culture. In 1975 a Cultural Division was created under the umbrella of the Department of Internal Affairs. Three years later the cultural division was closed down and merged with the Tumu Korero Division.

The year 1979 saw the cessation of the Tumu Korero Division. In recognition of these difficulties, the present establishment elevates culture to the status of the ministry unto itself. In 1992 the Ministry of Cultural Development was re-established and took up its new premises, which was built to host the 1992 Pacific Arts Festival. Referred to also as “Tauranga Vananga”, the Ministry is made up of five divisions, the National Library, National Museum, National Archives, Anthropology Unit and the National Auditorium. These divisions now come under 4 outputs:

- Cultural Development: Output 1 - Administration
- Cultural Activities: Output 2 - National Auditorium
- Cultural Heritage: Output 3 - National Museum & Anthropology
- National Records & Information: Output 4 - National Archives and National Library

## **Vision Statement**

1. To preserve, perpetuate and enhance Cook Islands Heritage.
2. To maintain cultural traditions and develop an appreciation for this important national resource.
3. To encourage growth and expansion of productive economic, social and educational activities as may enrich cultural art forms.
4. To present where appropriate the varied elements of ancient and contemporary Cook Islands art and cultural forms.
5. To maintain the unique cultural national identity of the people of the Cook Islands.

The Cultural Heritage is a division which holds two units, the National Museum and the Anthropology under its umbrella. A total of 3 staff works in the Cultural Heritage division.

Manager: Justina Nicholas  
Email: culture1@oyster.net.ck  
Phone: 20725 ext 210

Anthropology Officer: Mauri Toa  
Email: akaivi@culture.gov.ck

Museum Assistant: Teuru Naikar



(Staffs of the Ministry of Cultural Development)

## **A. Anthropology and Heritage Section**

The Anthropology and Heritage Section of the Ministry of Cultural Development was reconstructed from what was originally the Anthropology Division. This division was established in 1974 by the late Sir Albert Henry, the first Premier of the Cook Islands.

In 1974, the Anthropology Division consisted of a staff of six:

Rangi Moeka'a: Anthropologist to government  
Tangata Simiona: Assistant Anthropologist  
Barry Barquie: Junior Anthropologist  
Makiuti Tongia: Assistant Junior Anthropologist  
Awhitia Tavioni: Receptionist/Typist  
Joseph Herman: Chief Administration Officer

In general, the Anthropology Division was set up to assist in the preservation and promotion of the Cook Islands Culture. In terms of actual work, much of it was in the form of recording oral traditions. Once transcribed, the scripts were checked by the Anthropology Division. In 1978, the Anthropology Division was renamed "The Tumu Korero" division. In 1979, the Tumu Korero division closed down.

In May 1990, the Anthropology division was revived as part of the Ministry of Cultural Development. It became known as "Anthropological Services". Kauraka Kauraka, a qualified Anthropologist, was transferred from the Archives to head this section.

In 2008, the Secretary of Cultural Development created a Heritage Division to carry out the Cook Islands projects for the World Heritage Convention. The Cook Islands became a member of the World Heritage Convention on 19 April 2009. For more information about World Heritage see <http://whc.unesco.org>

## **B. Anthropology and Heritage Section**

The Cook Islands National Museum was opened on October 14th 1992 as an institution to display, educate and preserve the cultural history of the Cook Islands. We are not specifically a Museum of Art, Anthropology, Ethnology, Marine Biology or Natural History, but it is a museum with general descriptions encompassing our visual and material culture.

As a new museum, the collection comprises of a number of replicas, of traditional Cook Islands ethnographic materials, housed in foreign institutions. As it is our role to preserve, collect and display the material and visual culture of the Cook Islands, it is one of our main initiatives to

generate and develop an appreciation of one of our most finest resources, our Cook Islands cultural heritage.

## **EXHIBITIONS**

The National Museum is a spacious and modern complex consisting of an exhibition gallery of 200 square metres. The Museum is host to a variety of domestic and international contemporary art exhibitions.

"50 Years of Painting in the Cook Islands" is a retrospective exhibition that focuses on early modern painting in the Cook Islands. It celebrates a specific time period in which this genre emerged and came to be locally regarded as 'art'. It acknowledges the artists who visited these shores and the visual legacy that was left behind. A great part of the exhibition is dedicated to the response to a new kind of artistic process and how local culture came to adopt new ways and methods in which to express and reproduce the living environment around them. Featured in this exhibition is Pomani Tangata, Charles McPhee, Nga Teariki, Tim Manavaroa Buchanan, Ian George, Rick Welland, Edwin Shorter, Joan Rolls-Gragg and Rennie Peyroux.

## **C. Anthropology and Heritage Section**

The establishment of a Ministry of Arts and Culture in 1989 underlined a focus for the Constitution Celebrations. The area of Performing Arts was particularly noted and the work carried out in related fields by other departments was coordinated under one umbrella. The Ministry of Arts and Culture gradually developed into the Ministry of Cultural Development. An active Performing Arts division was accepted as an important sector in the Government's efforts to enhance an appreciation of culture while encouraging income-generating activities.

The Performing Arts division is now known as the "Events" a unit under the umbrella of the National Auditorium (Are Karioi Nui). This particular unit controls the running of the Ministry's four major events every year:

1. Te Mire Atu (The Composer's Competition)
2. Te Mire Ura (Dancer of the Year)
3. Constitution Celebrations now known as the "Te Maeva Nui"
4. Te Mire Tiare (Miss Tiare)

## **Te Maeva Nui**

The first Constitution Celebrations dance festival was held on Friday 2nd August 1968 at Taputapuatea, Avarua. It was highly acclaimed as a vital event in reviving and maintaining our maori heritage.

In subsequent years, it was held at the Constitution Park which is now Te Puna Korero/Sir Geoffrey Henry National Culture Centre. In these early times the Tereora College dance teams were quite prominent in the festival. Over the years, youth clubs became more active in the celebration's competition. There were problems at times. For instance, in 1977 and 1978 there were no competition due to disputes over the judging the previous year. The festival was still held but not as a competition.

In 1989 for the first time all the islands participated in the celebrations. The visiting teams were fully catered for with mattresses, blankets, food and so on for the first time. In 1991, there were no groups from the outer islands. Instead there was full participation from village groups and school teams in Rarotonga.

In 1992, there was limited outer island participation in the Celebrations. However, in 1993 there was full participation from the outer islands and once more the greatest number of groups from Rarotonga participating in the celebrations in recent years.

In 2006, a team of Cook Islanders from Auckland came over to participate in the Te Maeva Nui which increased the number of participating teams for 2006 and 2007.

Overall, the celebrations have become an annual event that all Cook Islanders look forward to. Each year's celebrations will see a great number of activities being introduced into the programme that will make it more meaningful as a cultural celebration.

The Te Maeva Nui have become popular for visitors from all over the world coming in to the country to witness this spectacular event. It is normally held at the end of July right through to the first week of August. A time where Cook Islanders celebrate self-government in the Cook Islands.

## **Turou Takai Marae**

In 1992, government declared the Tauranga Vananga (Ministry of Cultural Development) a national marae called Marae Puna Korero – Fountain of Knowledge and Wisdom. It sits on a land piece called Puaau meaning Flower of the 'Au - Hibiscus Tree. The site was formerly during the New Zealand period an agricultural nursery and before 1821 a traditional marae called Tongatua.

There are two taunga of the marae – taunga karakia for the singing of the pe'e and traditional prayers and taunga tumu marae or head of the marae. They are supported by staffs of the ministry as tiaki, keepers, custodians and guardians of the site.

The ceremony is in three parts. Part 1 is the turou or welcome at the Te Manava Rangatira stone monument on Te aranui o Makea Tauu or Victoria Road. This is done by the taunga karakia.

Part 2 is the garlanding of selected representatives in your contingent with the rau ti under the Orau o Puaau. You will be rakei ia by the Minister or Secretary of Cultural Development. Parts 1 and 2 will be accompanied by the drumming of the ka'ara, pu, pau placed strategically on the karioi terrace and the vivo.

The third part is the entering of the ko'a or lair of the Are Karioi Nui (National Auditorium while the vivo and ka'ara continues. Here you will be welcomed by the Minister of Cultural Development or Secretary of Tauranga Vananga. Inside the ko'a there will be a prayer of thanksgiving and lifting of the tapu of the marae thereby giving you permission to use the marae. At the same time you will be appointed as tiaki custodians and keepers of the marae for the duration of your event.

## **Cook Islands Games**

Over 300 athletes took part in field and athletics events for the Cook Islands Games first week of April. Athletes from Rarotonga, Aitutaki and Mangaia showed good form over the rest of the group for the Pacific Mini Games in September this year.

#### **D. Cook Islands National Auditorium (Are Karioi Nui)**

Built in 1992 the National Auditorium is the largest multicomplex of its kind in the Cook Islands. Events of special cultural significance are held in the National Auditorium as well as international sporting events, conferences, and a variety of stage productions. The National Auditorium is fully equipped with state of the art audio and lighting equipment and has seating for just over 1,800 people.

The National Auditorium is capable of holding stage events, conferences, forums, and indoor sports. These can be of national, regional and international status. Events of Cook Islands cultural significance are held in the National Auditorium. We stand proud in our commitment to our nation's blossoming cultural identity within the wider Pacific and International communities.

For indoor sports it offers an international standard size courts for Basketball, Netball, Boxing and Volleyball with capabilities to cater for Martial Arts, and Badminton. Stage concerts and musical productions are easily accommodated with the main stage capability of holding up to 60 performers

The National Auditorium is a division under Output 2 of Cultural Activities which holds 2 units under its umbrella, those of the Events and Audio Visual units. A total of 5 staff (including the Manager) works in the National Auditorium.

The National Auditorium division is also responsible for the sale of all Ministry productions such as dvds, cds, and videos.

Manager: Robert Ioaba  
Email: [karioi@culture.gov.ck](mailto:karioi@culture.gov.ck)  
Phone: (00682) 20725, Ext: 219

Events Officer: Joseph Rae  
Technical Officer: Phillip Tangi Jim  
Auditorium Assistant: Kylie Herman  
Technical Assistant: Teui Ahiao

## II. ICH Information Activities

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### A. National Library

The National Library is a unit under the National Records & Information division and is being merged with the National Archives. A total of 2 staff works in the National Library under the leadership of George Paniani, Manager for the National Records & Information division.

Library Officer: Odile Urirau  
Email Address: [website@oyster.net.ck](mailto:website@oyster.net.ck)

Library Assistant: Toni Moeroa

In October 1992, the Cook Islands Government established a National Library which is accommodated in the Sir Geoffrey Henry National Culture Centre/Te Puna Korero complex. However, it was not until April 1993 that the National Library service became fully operational. Today, it holds over 13,000 titles and continues to grow steadily. Primarily it serves Rarotonga, the main largest island and capital of the Cook Islands. It performs a dual function, firstly that of a National Library and secondly as a public lending library.

The National Library houses a small Pacific Collection, which it hopes to expand gradually as the focal point of reference for Cook Islanders and Researchers. Amongst the Cook Islands collection, we have copies of theses written by Cook Islanders and Non-Cook Islanders.

#### **PACIFIC COLLECTION and COOK ISLANDS COLLECTION**

In the National Library we have Pacific Collection including theses and rare books about the Cook Islands. Due to small space, it is our hope to focus on building our reference and Pacific collections.

Because of the difficulty in replacing most of these books our Pacific Collection won't be available for borrowing however if need be then a fee of \$10 for adults will be required. Secondary and Primary School School Students are not permitted to borrow from these collections.

The following books are available for sale at the National Library:

- The Ghost at Tokatarava and other stories from the Cook Islands  
A book written by Jon Jonassen based on some legends or old stories of the Cook Islands
- Ana Takitaki: a tale of Atiu  
A book told in poetry by William McBirney 1871-1956
- Early Immigrants to the Cook Islands  
Compiled by Jon Jonassen, a genealogy of the Nicholas family in the Cook Islands
- Learning Rarotonga Maori  
Written by Makiuti Tongia on how to speak the basic Cook Islands Maori language in ordinary situations
- Te Kakau Rangatira: Clothing of the Chiefs  
Written by Upokoina Teiotu on how the tapa cloth is made in Atiu
- Visions of the Pacific Book  
A book written about the 6th Festival of Arts that was held in Rarotonga, Cook Islands in 1992.

## **B. National Archives**

The National Archives is a unit under the National Records & Information division and is being merged with the National Library. The National Archives has a total of 3 staff including the manager.

Manager: George Paniani  
Email: [archives@oyster.net.ck](mailto:archives@oyster.net.ck)  
Phone: (682) 24-493

Archives Officer: Tui Tupa  
Archives Assistant: Tumutoa Henry

The first premier of the Cook Islands, the late Abert Henry was responsible for establishing the National Archives in 1974. The Archives was a division within the Premier's Department at the time. Initially, Takitumu Hostel at takamoia had been the Archives' temporary location. The Archives

Research Officer Tom Tixier administered the Archives, assisted by George Paniani.

In August 1975, the Archives moved to one end of the Library and Museum Society building. In April 1987, the archives under the control of Archivist George Paniani was moved to the Seismological Observatory at Takuvaine valley which is its present location. Kauraka Kauraka joined the Archives in 1988 as Principal Archivist, and remained there until he was transferred to the Anthropology Division in 1990. By that year the Archives had been brought under the umbrella of the Tauranga Vananga (Ministry of Cultural Development).

### **Legislation**

As provided in the Public Records Act 1984, the National Archives was established for the better preservation of public records of the Cook Islands which were transferred from government departments or acquired by the Archivist. All public records 15 years or older were transferred to the Archives after consultation by the Archivist with the relevant Heads of Ministries/Departments or Minister, could authorise the routine destruction of public records which are 15 years or older.

### **Preservation**

One of the major purposes of the National Archives is to preserve records of permanent value through the use of proper methods. This is achieved by controlling the deterioration rate of the materials using dehumidifiers (a machine for regulating humidity) in storage rooms; by fumigation; and other means. At present, the Archives has one dehumidifier.

Another way of prolonging the life of these records is by restoring or repairing damaged material. For example, photographs that are stuck together may be separated by soaking them in water. Archivist George Paniani is trained in the various methods of restoration and preservation.

### **Research**

The National Archives contains private, public and government information in the Archives custody which can be available for research. For example, a person from the Education Department may want to find out the expenditure pattern of their department over a period of ten years.

### **C. Digitisation**

The following are digitized contents on performing arts in Cook Islands and they are selling at the Ministry of Culture in our National Auditorium division.

- Te Maeva Nui 2012: A pack of 4 dvds consisting of the: Five nights of cultural performances, Choir and Imene Tuki competition, Tangi Kaara Competition and highlights of this year's float parade
- Te Mire Ura 2012 (Dancer of the Year of the Competition): A pack of two dvds consisting of the: Juniors, Intermediate, Seniors, Golden Oldies and Expats Dancers both in the male and female categories. Added to the package is a booklet with a profile of the top 3 winners in each category
- Te Mire Atu 2012 (Composer's Competition): A pack of 2 dvds and a booklet of this year's composers together with a profile on each with the lyrics to their compositions

DVDs for previous years are also available from the National Auditorium.

### III. IP Issues in Institutes

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The traditional performances of Cook Islands, such as music and dance, have been becoming popular among tourists. Because of this, some experts believe there are potential problems regarding intellectual property (IP) infringement and plagiarism. Therefore, our policymakers, as a way of safeguarding our heritage, must be more forward thinking with the IP aspects of traditional heritage. In line with this, the Cook Islands is working on a draft copyright bill that will go to Parliament<sup>1</sup>.

At present, the Ministry of Cultural Development and its related organisations do not have visible cases regarding IP rights infringement on ICH information. There have not been cases involving violations to copyrights in artistic expressions, trademarks in cultural signs, or misappropriation of ICH material by an institute or a third party. Also, polices or practical guidelines for protecting IP rights of ICH in the process of information building and sharing do not exist and, therefore, could not yet be used.

However, as people are becoming aware of the importance of the IP aspects of ICH information and the potential problems, stakeholders have been trying to bring up the more practical concerns on the IP matters of ICH. One way of visualising the practical movement for protecting IP rights of ICH information could be preparing general IP guidelines for staff members and indigenous individuals working on producing, managing, using ICH information.

It is expected that a collaboration project for protecting IP related rights in the field of ICH can be conducted in a near future.

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<sup>1</sup> The Cook Islands has no copyright law of its own, but has adopted and applied the New Zealand Copyright Act of 1962.

## IV. IP Issues in Cook Islands

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### A. Traditional Knowledge Action Plan

The Traditional Knowledge Action Plan for Forum Island Countries (FICs) was launched at a Traditional Knowledge workshop hosted by the Pacific Islands Forum Secretariat and World Intellectual Property Rights Organisation (WIPO) in 2009. The Action Plan has six beneficiary countries including Cook Islands.

According to the background of the Action Plan, it promotes an approach which guides the implementation activities:

“The first part, which is the subject of this Action Plan, involves the development of national systems of protection setting out new rights and obligations in TK that will complement existing forms of protection for intellectual property. This shall comprise essentially legal measures; however, non-legal measures such as that of customary and cultural practices and databases, amongst others, will form part of a holistic approach to the development of frameworks of protection. This will ensure that TK is not only sustainably managed but also regulated in a transparent manner.”

Also, its objective indicates that:

“Also to be undertaken in this medium-term period will be a range of activities aimed at realizing the objectives of TK legislation. This will include determining a range of reforms to intellectual property laws and exploring the role of customary laws and practices, amongst other legal and non-legal measures. This area of assistance responds to the recognition that, if the best possible outcomes for TK owners and TK users are to be achieved, a holistic approach to the protection and management of TK is required. Other assistance to be rendered on an on-going basis and which is aimed at addressing the international dimension of the Action Plan

involves the participation of FICs in meetings of the WIPO IGC (subject to funding provision to be made available), preparation of briefs by the PIFS and its regional partners for participating national delegations and the development of a process that promotes caucusing with other like-minded groupings within the WIPO IGC and other international fora. The Pacific Islands Forum's Geneva Office will play a key role in the co-ordination of positions with other delegations."

Please see [Annex II] for the full text of the Traditional Knowledge Implementation Action Plan.

## **B. National Legislation**

Legislations related to ICH are;

- House of Ariki Act 1966
- MOC Act 1990
- Cultural and Historic Places Act
- Reo Maori Act 2003
- Environment Act 2003
- Atiu and Takutea Regulations
- Traditional Knowledge Bill 2013
- Copyright Bill

The Cook Islands has no copyright law of its own, but has adopted and applied the New Zealand Copyright Act of 1962.

At the national level, the Traditional Knowledge Bill is expected to go to parliament and be adopted in 2013. Then, the Copyright Bill will follow this.

Please see [Annex III] for the text of Te Reo Maori Act 2003.



## *List of co-researchers*

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- **Mr Sonny Williams**  
Secretary for Culture  
Ministry of Cultural Development



## *Summary*

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## **1. Institutes Overview**

The Ministry of Cultural Development was set up in 1989. The main business of the Ministry is the preservation, enhancement and perpetuation of the Cook Islands culture. The Ministry has the following sections;

- Anthropology and Heritage Section
- Anthropology and Heritage Section
- Anthropology and Heritage Section
- Cook Islands National Auditorium (Are Karioi Nui)

## **2. ICH Information Activities**

### 1) National Library

The National Library is a unit under the National Records & Information division and is being merged with the National Archives. The National Library houses a small Pacific Collection, which it hopes to expand gradually as the focal point of reference for Cook Islanders and Researchers.

### 2) National Archives

The National Archives was established for the better preservation of public records of the Cook Islands which were transferred from government departments or acquired by the Archivist. Also, one of the major purposes of the National Archives is to preserve records of permanent value through the use of proper methods. The National Archives contains private, public and government information in the Archives custody which can be available for research.

## **3. IP Issues in Institutes**

The traditional performances of Cook Islands have been becoming popular among tourists. Because of this, some experts believe there are potential problems regarding IP infringement and plagiarism. In line with this, the Cook Islands is working on a draft copyright bill that will go to Parliament.

At present, the Ministry of Cultural Development and its related organisations do not have visible cases regarding IP rights infringement on ICH information. Also, policies or practical guidelines for protecting IP rights of ICH in the process of information building and sharing do not exist and, therefore, could not yet be used.

However, as people are becoming aware of the importance of the IP aspects of ICH information and the potential problems, stakeholders have been trying to bring up the more practical concerns on the IP matters of ICH.

### **3. IP Issues in Cook Islands**

Legislations related to ICH are;

- House of Ariki Act 1966
- MOC Act 1990
- Cultural and Historic Places Act
- Reo Maori Act 2003
- Environment Act 2003
- Atiu and Takutea Regulations
- Traditional Knowledge Bill 2013
- Copyright Bill



## Annex 1 | *Questionnaire*



## 1. Introduction

Intangible cultural heritage (ICH), which is the source of human creativity and cultural diversity, has been diminishing since the onset of globalisation and urbanisation. In this regard, international society, working in tandem with UNESCO, has garnered public attention on ICH safeguarding, and the Convention for the Safeguarding of the Intangible Cultural Heritage was adopted in 2003.

According to Article 13, d.iii of the 2003 Convention, States Parties should establish documentation institutions for ICH and facilitate access to them to ensure the safeguarding, development, and promotion of ICH present in each State Party's territory. This is to say, the Convention encourages managing an institute related to information building and sharing—one that collects, produces, and disseminates ICH information.

The process of ICH information building and sharing could be the cornerstone to safeguarding ICH. However, as with most kinds of information activities in other fields, the process of ICH information building and sharing includes many intellectual property (IP) issues.

Many problems could arise while collecting and creating ICH information, while processing and producing ICH information, and while disseminating and utilising ICH information. Additional, diverse problems could also develop from the communities, institutes, or individuals involved in the process.

In particular, with the development of technology and the appearance of new media, ICH intellectual property issues can manifest themselves in many ways, and these problems have expanded into much more complicated arenas.

The International Information and Networking Centre for Intangible Cultural Heritage in the Asia-Pacific Region under the auspices of UNESCO (ICHCAP) has been concerned with IP issues related to ICH information building and sharing. To cope with these concerns, ICHCAP has endeavoured to develop a guideline for protecting IP in the process of ICH information building and sharing.

ICHCAP has proposed a project for a field survey to examine IP issues, focusing on activities of ICH information-related institutes in the Asia-Pacific region and on cases about how to deal with problems that arise in the process of ICH information building and sharing.

The survey is expected to contribute by allowing an exchange of experiences and know-how in the Asia-Pacific region to foster an environment to understand and resolve problems related to IP aspects of ICH. Furthermore, the survey results could be the foundation for developing a guideline for protecting IP rights during ICH information building and sharing.

## 2. Glossary

For the current survey, the terms below will have the given meanings.

- 1) Bearer  
A member of a community who recognises, reproduces, transmits, transforms, creates, and forms a certain culture in and for a community. A bearer can, in addition, play one or more of the following roles: practitioner, creator, and custodian.<sup>1</sup>
- 2) Community  
People who share a self-ascribed sense of connectedness. This may be manifested, for example, in a feeling of identity or in common behaviour, as well as in activities and territories. Individuals can belong to more than one community.<sup>2</sup>
- 3) Custodian  
A practitioner who has been entrusted by the community with the responsibility of safeguarding their intangible cultural heritage.<sup>3</sup>
- 4) Documentation  
The recording of ICH in tangible forms.<sup>4</sup>
- 5) Identification  
Technical description of a specific element constitutive of the ICH, often done in the context of a systematic inventory.<sup>5</sup>
- 6) Information Building and Sharing  
A series of activities that build and utilise ICH information, such as identification, inventory making, documentation, and digitisation. The process of ICH information building and sharing consists of several stages: a stage for preparation, a stage for collecting and creating information, a stage for maintaining information, a stage for processing and producing information, and a stage for utilising and disseminating information.
- 7) Informants  
Local experts from whom information about particular cultural practices is obtained, in the context of cultural field research.<sup>6</sup>

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<sup>1</sup> UNESCO Glossary Intangible Cultural Heritage. Prepared by International Meeting of Experts on Intangible Cultural Heritage. The Hague, August 2002, p.4

<sup>2</sup>*Ibid.*

<sup>3</sup>*Ibid.*

<sup>4</sup>*Ibid.* p.5

<sup>5</sup>*Ibid.* p.5

<sup>6</sup> Peter Seitel, *Proposed Terminology for Intangible Cultural Heritage: Towards Anthropological and Folkloristic Common Sense in a Global Era*. UNESCO International Round Table 'Intangible Cultural Heritage', 2001 p.9

8) Intangible Cultural Heritage (ICH)

Practices, representations, expressions, knowledge, and skills—as well as the instruments, objects, artefacts, and cultural spaces associated therewith—that communities, groups, and in some cases, individuals recognise as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature, and their history, and it provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity.<sup>7</sup>

9) Intellectual Property (IP)

Legal rights that result from intellectual activity in the industrial, scientific, literary, or artistic fields.<sup>8</sup> Common types of intellectual property rights include copyrights, trademarks, patents, industrial design rights, and trade secrets.

10) Inventory Making

Drawing up one or more inventories of the intangible cultural heritage present in territories to ensure identification with a view to safeguarding.<sup>9</sup>

11) Moral Rights

Owner's right to claim authorship of the work and to object to any distortion, mutilation, or other modification or derogatory action in relation to the said work that would be prejudicial to the owner's honour or reputation.<sup>10</sup>

12) Practitioner

A member of a community who actively reproduces, transmits, transforms, creates, and forms culture in and for the community by performing and otherwise maintaining social practices based on specialised knowledge and skills.<sup>11</sup>

13) Stakeholder

Various levels of agency in ICH information building and sharing activities, including public and private institutions, and more specifically artists and creators of the cultural communities concerned.<sup>12</sup>

14) Subjects of ICH

Bearers, practitioners, and communities.

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<sup>7</sup> Art.2 UNESCO Convention for the Safeguarding of Intangible Cultural Heritage, 2003

<sup>8</sup> World Intellectual Property Organization, *WIPO Intellectual Property Handbook: Law, Policy and Use*, WIPO Publication No. 489(E). p.3

<sup>9</sup> Art.12.1. UNESCO Convention for the Safeguarding. *opcit*

<sup>10</sup> Art.6Bis Berne Convention for the Protection of literary and Artistic Works, Paris Text 1971

<sup>11</sup> UNESCO Glossary Intangible Cultural Heritage. *opcit* p.5

<sup>12</sup> Noriko Aikawa, *State of Intangible Heritage Development in the Lead Up to the 2003 Convention*. UNESCO Shanghai meeting in the lead up to the adoption of ICH Convention. Training of the trainers. Asia and Pacific. Module 1. p.21

### 3. Specific Questionnaire

#### A. Institute Overview

- 1) Profile of the institute
  - a) What is the name of institute?
  - b) Where is the institute located? (City/Country)
  - c) Please introduce the history of institute.
  - d) What are objectives and functions of the institute?
  - e) In what country/region have your institute's activities been carried out?
  - f) What kind of ICH is your institute specialised in?  
Ex) performing arts, dance, music, rituals, ceremonies, etc.
  
- 2) Characteristics of the institute
  - a) Your institute can be classified as
    - Government department
    - Public institution
    - Public enterprise
    - Private enterprise
    - NGO
    - Other (Please explain the classification)
  - b) Is your institute affiliated with other organisations? If yes, please describe the parent or affiliated organisations—name, classification, objectives and functions, specialisation, etc. (over 200 words in English)
  - c) What are the institution's sources of budget?  
Ex) a national budget, fund-raising activities, etc.

#### B. Information Building and Sharing Activities of Institute

- 3) Information building and sharing activities of the institute
  - a) Please indicate the kinds of activities your institute has done or is doing.
    - Identification
    - Documentation
    - Inventory making
    - Database/Archive building
    - Publication and distribution
    - Utilising digital contents
    - Other (Please explain other activities your institute has done)

- b) Among your answers in [B-3-a], which activity does your institute mainly focus on? (multiple answers allowed)
- (1) Please explain the activity (over 250 words in English)
  - (2) If any, please also provide guidelines, internal regulations, or other principles regarding the activity.
- c) Regarding your answers in [B-3-b], please describe specific projects related to the activity by giving a set of answers below. If you have more than one project, please provide a set of answers for each one (One to three examples are recommended, but you can also give more than three examples)
- (1) Name of project
  - (2) Duty department
  - (3) Background of project (over 150 words in English)
  - (4) Context of project (over 250 words in English)
  - (5) Procedures of project
  - (6) Outcomes/Effects
- d) If you indicated in [B-3-a] that your institute did activities related to database/archive building, please provide an additional explanation about the activities.
- (1) How did/does your institute obtain ICH-related data or archives?
    - Field work and documentation
    - Purchase
    - Donation
    - Other (Please explain how your institute obtains(ed) ICH-related data or archives)

If you checked more than one answer, what is the primary way your institute obtains(ed) ICH-related data or archives? Please arrange your answer according to the order of priority.
  - (2) Please provide an index of data or archives of your institute by giving a set of answers below.
    - (a) Name of data
    - (b) Online/Offline data
    - (c) Type of data
      - Ex) text, photograph, recording, video, etc.
    - (d) Source of data
      - (Where did the data originate?)
    - (e) Context of data
    - (f) Person/Organisation who has rights on the data
    - (g) Principle/Guideline of data management, if any.

### C. Intellectual Property Issues in Institute

- 4) Does your institute have experience with a project regarding IP aspects of ICH?

- Yes
- No

If yes, please describe the project by answering the questions below. If you have more than one project, please provide a set of answers for each one.

- a) Name of project
- b) Duty department
- c) Background of project (over 150 words in English)
- d) Context of project (over 250 words in English)
- e) Procedures of project
- f) Outcomes/Effects

- 5) Is there a department, a unit, or an individual undertaking tasks related to intellectual property?

- Yes
- No

If yes, please provide information below.

- a) Name of department (which covers the unit or the individual)
- b) Name of duty person (in the department, the unit)
- c) Tasks of department
  - (a) Main task  
(What is the main task of the department? [over 100 words in English])
  - (b) Tasks relating to intellectual property  
(Please describe the tasks that are related to intellectual property [over 100 words in English])
- d) Contact information
  - (a) Contact number and e-mail of department
  - (b) Contact number and e-mail of duty person

- 6) Does your institute have a principle for protecting IP aspects of ICH?

- Yes
- No

If yes,

- a) Please describe the principle (over 150 words in English)
- b) If any, please attach documents related to answers in [C-6-a].

## D. Intellectual Property Issues in the Process of Information Building and Sharing

ICH information building and sharing constitutes a series of activities that build and utilise ICH information, such as identification, inventory making, documentation, and digitisation. The process of ICH information building and sharing consists of several stages: a stage for preparation, a stage for collecting and creating information, a stage for maintaining information, a stage for processing and producing information, and a stage for utilising and disseminating information. Each stage is detailed below.

- The stage for preparation: conducting preliminary investigations, planning activities, selecting ICH objects to be investigated, undergoing prior consultation on an activity, etc.
- The stage for collecting and creating information: conducting field surveys (interviews, recording, filming, etc.), purchasing data, receiving donations, etc.
- The stage for maintaining information: building a database, keeping the data in its original form, classifying the data, constructing a security system for the data, etc.
- The stage for processing and producing information: editing, modifying, and upgrading information collected and maintained in the previous stages towards forms of documents, videos, web pages, etc.
- The stage for utilising and disseminating information: disclosing and disseminating information produced, distributing commercially, and utilising existing information for broadcasting, advertising, publicity, etc.

The management of ICH information raises equally different intellectual property issues from one category to another, be it in the phase of preparation, collection, production, or dissemination.

In **the stage for preparation**, intellectual property issues that could arise are below.

- Problems regarding identifying the nature of rights existing in ICH that will be targeted in information building and sharing activities
  - Identifying copyrighted works
  - Identifying unpublished or unknown authors' works
- Problems regarding compliance with a country's laws and regulations or customs concerning ICH information building and sharing activities

- Identifying a country's laws and regulations or customs that could affect information building and sharing activities
- Examining the range of protection under national statutes of IP rights of ICH practitioners and creators
- Others
  - Other intellectual property issues that could arise during the preparation stage

**In the stage for collecting and creating information, the stage for maintaining information, the stage for processing and producing information, and the stage for utilising and disseminating information,** intellectual property issues that could arise are below, grouped into categories of IP rights.

### **Ownership**

- Identification of the owner of the copyright and related rights in the recordings, films, or manuscripts embodying ICH
- Determination of ownership of both the database itself and its contents
- Issue of bearers' ownership rights in adaptations such as lawful inspiration or the borrowing of work based on one or several pre-existing ICH work(s)
- Custodians', owners', and/or managers' rights of ownership of secondary materials embodying ICH (secondary materials include items such as films, sound recordings, photographs, and written documents.)
- Bearers' ownership of ICH-derived materials that are legally owned by the creator of the document, recording, and/or database embodying ICH
- Issue of joint ownership in work involving ICH material

### **Prior Informed Consent or Approval**

- Issue of an approval or an agreement related to collecting ICH information
  - Identifying the authority who has been granted power to approve (permission or agreement from bearers, practitioners, communities, or other stakeholders)
  - Determining the terms and scope of the approval or agreement from bearers, practitioners, communities, or other stakeholders

- Prior informed consent to the reproduction, use, and display of ICH material
- Bearer's, practitioner's, or community's objections to utilising and disseminating information
- Determination of the format of agreements: consent forms to access and use ICH materials, licenses, undertakings, etc.

### **Maintenance of Collected Information**

- Determination of data classification in an area of protection under IP related law
- Determination of the database to be built according to its uniqueness in IP related law

### **Adaptations**

- The issue of unauthorised adaptations
- Issue of legal rights that could arise during secondary utilisation of information
  - Permission from stakeholders about secondary utilisation, such as broadcasting, advertising, publicity, etc.
  - Intellectual property of the secondarily used information

### **Secret, Sacred, or Confidential ICH**

- Issue of secrecy, sacredness, or confidentiality under customary laws and practices of ICH material collected
- Problems regarding disclosure of secret information

### **Access, Control, and Use**

#### ***Communities' Involvement***

- Determination of communities' participation in the recording, digitisation, and dissemination of ICH for safeguarding, promotional, and income-generating purposes
- Communities' involvement in the decision-making processes related to the management of ICH elements held by institutes
- Authority of ICH subjects and their capacity to manage information once produced
- Bearers' agreement on modification or transformation of ICH materials

- Determination of communities' legitimate rights holders
- Management of access and use of ICH information by communities
- General public's interests to benefit from and enjoy the information building and sharing activities of ICH

### ***Relationships***

- Issue of database users' interaction with bearers for use of ICH
- Issue of relationships between an institution that holds the material, and a bearer, be it the owner, custodian, or manager.

### ***Terms of Use of ICH Material***

- Code on management, access, and use of ICH information
- Compliance with restricted ICH use under customary laws and practices
- Establishment of IP-related protocols, policies, and practices

### **Infringement of Rights and Responsibilities**

- Infringement of intellectual property rights existing in the ICH information
  - Copyrights in literary, musical, and artistic expressions
  - Related rights (performers', phonograms', producers', and broadcasting organisations' rights) in performances, rituals, recordings, etc.
  - Trademark in cultural names, signs, indications, marks, symbols, etc.
  - Indigenous know-how and knowledge protected under trade secrets, patent law, etc.
  - Design rights in cultural textiles, poetry, etc.
- Legal responsibilities of institutes leading the activities
  - Vis-à-vis communities from which the ICH was collected
  - Vis-à-vis users to whom ICH is delivered
  - Vis-à-vis website viewers of digitised ICH collections

### **Licensing**

- Licensing by institutions of ICH material in a recording, database, or collection
- Terms of licensing
- Content of ICH material to be licensed
- Identification of the exact licensee and licensor

### **Bearers' Moral Rights**

- Disclosure of ICH ownership information on any related use
- Problems regarding the determination of the range of disclosure
- Case of derogatory work related to ICH
- Respect of bearers' right to integrity

### **Sharing of Benefits**

- Issue of respect of bearers' economic rights
  - Right to translation
  - Right to reproduction
  - Right to communication to the public
  - Others
- Problems regarding the distribution of profit that comes from utilising and disseminating information
  - Economic compensation for bearers, practitioners, or communities
  - Economic compensation for other affiliated organisations or individuals, such as collectors, researchers, agencies, or collective management organisations

### **Unfair Use or Misuse of ICH**

- Misappropriation of ICH material by an institute
- Misappropriation of ICH material by a third party

### **Portraits, Filming, or Reproduction of ICH Material**

- Right to use for commercial purposes
- Respect of motion pictures right in ICH digitisation
- Moral rights of bearers in portraits or films
- Respect of the sacredness, secret, or sanctity of portraits or films
- Right to reproduction in digitising a photograph
- Exception to copyright in cases of promotional or educational purposes

### **Use of ICH as Trademark, Geographical Indication, or Domain Name**

- Bearers' approval in using ICH material as logos or product identifiers
- Misuse of cultural words as trade name, domain name, or geographical indication

7) Have any of the above issues arisen in any of the stages at your institute?

- Yes
- No

If yes, please describe the issue by answering the questions below. If you have more than one issue, please provide a set of answers for each one.

a) Please explain the activity your institute did.

(a) Name of project

(b) Sort of activity

(What kind of information building and sharing activities did your institute do in the project?)

Ex) identification, documentation, inventory making, database building, etc.

(c) Objective of project

b) What kinds of issues have arisen?

- Problems regarding compliance with a country's laws and regulations or customs concerning ICH information building and sharing activities
- Problems regarding identifying the nature of rights existing on ICH that will be used in information building and sharing activities
- Problems regarding identifying the nature of rights existing in ICH
- Problems regarding ownership of ICH
- Problems regarding prior informed consent or approval
- Problems regarding maintenance of collected information
- Problems regarding adaptations
- Problems regarding secret, sacred, or confidential ICH
- Problems regarding bearers' moral rights
- Problems regarding sharing of benefits
- Problems regarding unfair use or misuse of ICH material
- Problems regarding portraits, filming, and reproduction
- Problems regarding the use of ICH as a trademark, geographical indication, or domain
- Other (Please indicate the issue)

c) Please indicate all stages in which the issue has arisen.

- The stage for preparation
- The stage for collecting and creating information
- The stage for maintaining information
- The stage for processing and producing information
- The stage utilising and disseminating information

- d) What was the cause and content of the issue? (over 500 words in English)
  - e) Who were the stakeholders involved with the issue?
  - f) What did the institute do to resolve the issue? Please describe the process and the results of the resolution. (over 500 words in English)
  - g) What was the institute's principle in the process of dealing with the issue?
  - h) Does your institute have a guideline, policy, or protocol regarding legal issues that could arise during the stage?
    - Yes
    - No
 If yes, please attach the copy of the guidelines, policies, or protocols.
  - i) Please attach any other forms (ex. form of agreement) that were used during the stage.
- 8) Through your institute's experience, what kind of legal issues regarding IP aspects of ICH do you think could arise in each stage? (over 400 words in English)
- 9) In relation to [D-7] and [D-8], what kind of alternatives, guidelines, policies, or protocols do you think should be prepared? (over 400 words in English)

## **E. Institute's Activities**

Here are questions on issues that could arise in the entire process of the institute's activities.

- 10) What kind of relationship does your institute have with ICH subjects, such as informants, collectors, researchers?  
 Ex) one-way asymmetrical relationship, one-way symmetrical relationship, two-way asymmetrical relationship, two-way symmetrical relationship, owner vs. custodian, etc.
- 11) Does your institute include intellectual property issues in the institute's vision, purpose, function, policies, etc.? If yes, please indicate your institute's vision, purpose, function, policies, etc. that addresses intellectual property issues.
- 12) Does your institute have a representative legal dispute regarding the institute's information building and sharing activities?  
 Yes  
 No

If yes, please describe the case. If you have had more than one case, please provide a set of answers for each one.

- a) Name of project
- b) Sort of activity
- c) Purpose of project
- d) Procedures and context (over 200 words in English)
- e) Issue activated (over 200 words in English)
- f) Response to the issue

(Who or what department was in charge of the issue? How did the department cope with the issue? Were the principles or guidelines adjusted to the case? [over 300 words in English])

- 13) Does your institute have a case of guaranteeing the rights and the participation of ICH subjects (bearers, practitioners, or communities) in the institute's information building and sharing activities?

- Yes
- No

If yes, please describe the case below. If you have more than one case, please provide a set of answers for each one.

- a) Name of project
- b) Sort of activity
- c) Purpose of project
- d) Participation of subject in the procedure (over 300 words in English)
- e) Rights of subject guaranteed
- f) Please attach related documents.

- 14) Have policies or guidelines for protecting intellectual property rights of ICH in the process of information building and sharing been well organised in your institute?

- Yes
- No

If yes, please provide information on the policy or the guideline, including

- a) Context of the policy or the guideline
- b) Please attach related forms. (ex. form of agreement)

## **F. Related Legislation**

- 15) In your institute's country, is legislation or the legal system for the protection of cultural heritage organised?

- Yes
- No

If yes, please describe the legislation or the legal system below.

- a) Full title
- b) The relevant sections or paragraphs
- c) Date of coming into force
- d) Details of the office responsible for administering the laws
- e) Copies of laws and regulations
- f) What are issues or problems regarding IP aspects of ICH that cannot be covered by the legislation or the legal system described above?
- g) What kind of legal systems or devices need to be added for the protection of IP aspects of ICH?

If no, please provide additional information below.

- h) Legal systems or regulations expected to be issued
- i) Status of processing

## **G. Future Plans**

In case your institute has not been equipped with policies or guidelines for protecting intellectual property related aspects of ICH, please answer the following questions.

- 16) Does your institute have plans for organising guidelines or regulations for protecting ICH intellectual property related rights in the process of information building and sharing?
- Yes
  - No
- a) If yes, please describe your institute's future plans (manner and context) for organising guidelines or regulations. (over 250 words in English)
- b) If a future plan is in the process of being organised, please provide additional information below.
- (1) Guidelines or regulations expected to be organised
  - (2) Status of processing
- 17) Does your institute have plans for projects regarding the protection of intellectual property related rights in the process of information building and sharing?
- Yes
  - No
- If yes, please describe the project below.
- a) Purpose of project
  - b) Term and duration
  - c) Context
  - d) Anticipated procedures

## H. Other Opinions

18) Please provide any kind of information related to the purpose of this survey.

## 4. Contacts

Please provide contact information of the person who is in charge of this survey report.

Name	
Position	
Department	
Address	
E-mail	
Telephone	
Mobile	
Fax	

## 5. Reference materials

Please provide all attached materials with information below.

Distinction (relevant question)	
Form of material	
Name	
Source	
Context	

## 6. Results

Replies to this questionnaire should kindly be sent no later than the prearranged date to the following address.

**Ms Saymin Lee** (Information & Research Section)  
Intangible Cultural Heritage Centre for Asia and the Pacific (ICHCAP)  
National Research Institute of Cultural Heritage Bldg (4F)  
132 Munji-ro, Yuseong-gu, Deajeon 305-380  
Republic of Korea  
Tel. +82 42 820 3513 / Fax. +82 42 820 3500

The survey may also be e-mailed to the address below, but in addition to the e-mailed materials, please kindly send the requested references materials to the above address.

E-mail: [ichcap@gmail.com](mailto:ichcap@gmail.com)  
[smlee@ichcap.org](mailto:smlee@ichcap.org)

Reference materials can be submitted using Webhard.

Address: [www.webhard.net](http://www.webhard.net)  
Id: ICHCAP  
Password: ichcap

***Thank you for your valuable contribution to the survey.***



Annex 2| ***TK Implementation  
Action Plan***



# Traditional Knowledge Implementation Action Plan

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## Part I Summary Sheet

Beneficiary Countries:	Cook Islands, Fiji, Kiribati, Palau, Papua New Guinea and Vanuatu
Project Title:	Pacific Islands Forum Countries Traditional Knowledge Implementation Action Plan
Estimated Cost:	USD\$570,400 (FJD\$905,440*) for Phase I activities only
Estimated Duration:	24 months commencing March 2009
Regional & International Counterpart Institutions:	Secretariat of the Pacific Community (SPC), Secretariat of the Pacific Regional Environment Programme (SPREP), World Intellectual Property Organization (WIPO)
Day to day contact point:	Douveri Henao Trade Policy Officer Economic Governance Division Pacific Islands Forum Secretariat (PIFS) Tel: (679) 3312 600 Email: <a href="mailto:douverih@forumsec.org.fj">douverih@forumsec.org.fj</a>
Formal contact point:	Tuiloma Neroni Slade Secretary General Pacific Islands Forum Secretariat (PIFS) Pacific Islands Forum Secretariat (PIFS) Tel: (679) 3312 600 Email: <a href="mailto:neronis@forumsec.org.fj">neronis@forumsec.org.fj</a>

\* exchange rate as at March 2009

## Part II

### Overview: Background, Objective, Justification, Planned Activities and Outputs

#### Background

The mandate of the Pacific Island Forum Secretariat (PIFS) to develop frameworks for Traditional Knowledge (TK) protection arose at the Forum Trade Ministers Meeting in 1999 out of a recognition that the region's traditional and cultural resources were being improperly exploited without due compensation to TK owners. Work on TK aims to address this on two levels through the development of regional frameworks for 1) Traditional Biological Resources (protection of traditional plants, medicinal knowledge etc), in collaboration with the Secretariat of the Pacific Regional Environmental Programme (SPREP); and 2) Traditional Knowledge and Expressions of Culture (TKEC) (protection of traditional arts, songs, dances etc.), in collaboration with the Secretariat of the Pacific Community (SPC).

2. The Pacific Plan recognizes the need for protection of cultural values, identities and TK. In that regard, the Plan recognizes the role that Intellectual Property Rights (IPRs) may have, particularly in ensuring the sustainable development and ownership of the region's TK resources. Pacific Leaders have approved the creation of an institution to advocate protection of TK and IPRs and a study into its feasibility will be undertaken in 2009.

3. In 2002, the Model Law on Traditional Knowledge and Expressions of Culture (TKEC) was completed. It was subsequently endorsed for adoption by member countries by the SPC Ministers for Culture followed by Forum Trade Ministers in 2003. A regional framework on Traditional Biological Resources, Innovations and Practices was developed in 2001 and recently received the formal endorsement of Pacific African Caribbean Pacific (ACP) Trade Ministers in March 2008. Some six countries have taken commendable steps to implement the Model Law on TKEC, with two countries, Fiji and Palau, now having draft TK Bills in place for public consultations with the view to consideration and legislative enactment.

4. In March 2007, at a high-level meeting of the executives of the PIFS and the SPC, it was decided that lead agency responsibilities relating to the Model Law would move from the SPC, which had held those responsibilities since 1999, to the PIFS. As a first step in this new role, the PIFS convened a Workshop in June 2007 to determine member countries' technical assistance needs with regard to progressing the Model Law's implementation at the national level (the conclusions and recommendations of that Workshop were subsequently endorsed by Forum Trade Ministers in August 2007). This Traditional Knowledge

Implementation Action Plan (hereafter ‘the Action Plan’) is, in part, a response to member countries’ requests for technical assistance as conveyed to the PIFS at the above Workshop.

5. The Action Plan is based on a distillation of Forum Trade Ministers’ directives since 1999 and the broader context and more recent directives set out in the Pacific Plan. The Action Plan is cognizant of the wider economic reforms countries are engaged in to respond to rapid globalization, diminishing trade preferences and aid. Improved policy transparency, the creation of a supportive environment for private sector expansion and economic growth, and assuring accountability and good governance underpin the Action Plan.

6. In view of the above, the Action Plan promotes broadly a two-pronged approach which guides the implementation activities. The first part, which is the subject of this Action Plan, involves the development of national systems of protection setting out new rights and obligations in TK that will complement existing forms of protection for intellectual property. This shall comprise essentially legal measures; however, non-legal measures such as that of customary and cultural practices and databases, amongst others, will form part of a holistic approach to the development of frameworks of protection. This will ensure that TK is not only sustainably managed but also regulated in a transparent manner. The second part of this Action Plan, which is predicated on progress being achieved in the first part referred to above, will involve the development of cultural industries in the region through activities to promote the commercialization of TK. The consolidation of TK resources, through the development of regulatory mechanisms and the establishment of databases to promote accessibility to TK, is intended to encourage economic activity and market access opportunities at all levels of the community. Ultimately, the project aims to contribute to the improvement of livelihoods and the eradication of poverty in the region.

### **Objective**

7. The overall objective of the Action Plan is to assist the Forum Island Countries (FICs) in their efforts to establish a regional infrastructure for TK that will consist of a mutual recognition and enforcement regime founded on uniform national legal systems of protection. As a first step, the Action Plan will assist the FICs to develop policy and draft legislation based on the Model Law on TKEC and the Traditional Biological Resources framework. Then, as a second step a regional system of TK protection will be developed. A regional system maximizes the benefits of participation in ways that national systems are unable to, particularly when an international treaty on TK is still being discussed. The regional infrastructure may be made operational through an instrument such as a treaty

and entail a co-ordinated legal approach to the protection of the region's TK, including the mutual recognition and enforcement of rights and obligations between participating jurisdictions. This mechanism will allow for a more effective approach to the protection of TK, including recourse measures for the infringement of TK owners and users' rights. National systems of protection in comparison to that of a regional system, are limited by virtue of their jurisdictional reach and ability to provide effective recourse measures, particularly for those infringements taking place beyond national jurisdictions. Given that a large number of infringements often take place across and outside individual national jurisdictions, a regional regime would provide more effective recourse measures.

8. The Action Plan promotes a "bottom-up" approach, i.e. through the development of national and regional systems of protection while work is continuing on the development of international instruments for the protection of TK. The continued exposure of Pacific TK to improper exploitation without due compensation demands that a regional approach be adopted as a matter of urgency while an international regime is being finalised. Thus, while targeted activities will be undertaken at the national and regional levels, the Action Plan also provides for activities promoting the positive engagement of FICs and regional partners in the work of international fora on TK such as the WIPO Intergovernmental Committee on Intellectual Property, TK, Genetic Resources and Folklore (WIPO IGC).

9. The provision of assistance under the Action Plan is divided into activities for the short and medium-term over a 24-month period. Those activities address measures to be taken at, or which are impacted by, developments at the national, regional and international levels.

10. The bulk of activities in the short-term (first 12 months of the Action Plan) focus predominantly at the national level and provide the foundation for further work to be undertaken on the regional dimension. National level activities will involve assisting FICs develop similar national legislation which will not only address domestic TK concerns but also facilitate and promote regional recognition and enforcement of rights to TK, TK policy frameworks (some countries have already requested assistance in this area) and databases to store TK. These activities will be delivered through national workshops, commissioning of consultancies and the provision of equipment. In the medium-term (12-24 months) of the Action Plan, a comprehensive cultural mapping exercise will commence and involve the fielding of officers for the purpose of gathering and documenting TK. This exercise will, depending on the size of the country in question, differ in logistical and resource requirements. Also to be undertaken in this medium-term period will be a range of activities aimed at

realizing the objectives of TK legislation. This will include determining a range of reforms to intellectual property laws and exploring the role of customary laws and practices, amongst other legal and non-legal measures. This area of assistance responds to the recognition that, if the best possible outcomes for TK owners and TK users are to be achieved, a holistic approach to the protection and management of TK is required. Other assistance to be rendered on an on-going basis and which is aimed at addressing the international dimension of the Action Plan involves the participation of FICs in meetings of the WIPO IGC (subject to funding provision to be made available), preparation of briefs by the PIFS and its regional partners for participating national delegations and the development of a process that promotes caucusing with other like-minded groupings within the WIPO IGC and other international fora. The Pacific Islands Forum's Geneva Office will play a key role in the co-ordination of positions with other delegations.

## **Justification**

11. The justification for the project may be summarised as follows:

the establishment of national systems of TK protection and a regional system will 1) accord ownership of TK resources to their rightful TK owners; 2) promote the sustainable and transparent management of TK resources; and 3) facilitate the commercialisation of TK for the benefit of TK owners and TK users. More broadly, this will result in increased potential for improvements across all levels of the economy from local/village communities to large-scale cultural industry and private sector developments;

the heightened global competition for new products, processes and services, including the growing global market for culturally-distinguishable products brought about by increased travel, globalisation of trade and advances in information technology, relies on intellectual capital which is considered an input to economic production. Technology transfer can be effected and intellectual capital can be made available in accordance with appropriate legislation to potential users and investors to develop new, or to improve existing products or processes using TK in a manner which will realise genuine benefits for the TK holders themselves;

the slow evolution of international rules on TK compels the need to develop national and regional systems of protection so that exploitation of TK resources can be contained and managed whilst parallel work continues on broader international arrangements. To ensure consistency between national and regional developments in TK with evolving developments at the international level, national and regional positions will be reflected and promoted at relevant international fora dealing with the subject.

## **Planned Activities**

12. The Action Plan involves progressive implementation of structured activities for the development of TK regimes in the FICs. It provides for coordinated development of similar legislation that would form the basis for a regional arrangement (such as a treaty) for mutual recognition and enforcement. The Action Plan involves two phases comprising the following elements:

### **Phase I – Implementation of Activities in the Short-term (first 12 months)**

13. Phase I Activities include those to be implemented in the short-term period and provide the basis for later activities to be undertaken. They form the building blocks of the Action Plan and their completion is a pre-requisite for subsequent activities.

i) TK Legislation & TK Policy Framework. This activity entails the provision of technical assistance for developing new legislation based on the Model Law on TKEC and Traditional Biological Resources Framework. The initial step will be the convening of national workshops in those countries which presently do not have a draft Bill to address the legal and policy aspects of the Model Law in the national context and to gauge stakeholders' response. The discussions will allow for instructions to be prepared for the drafting of a Bill. For countries that already have draft Bills, the national workshops will allow consultations involving all stakeholders to take place and revisions to be made to existing draft Bills where necessary in preparation for parliamentary approval;

ii) Capacity-Building and Outreach Activities Related to TK and IP. Capacity-building and outreach activities at the provincial and sub-national levels are envisaged to ensure comprehensive engagement with key stakeholders, in particular the involvement of TK owners, in the legislative development process. The need for TK owners to understand the implications of the Model Law and the effect of subsequent proposed legislation on their resources mandates their full participation in the above process. This will ensure trust to develop between the state and TK owners and the promotion of a sense of ownership and buy-in for the initiative by TK owners. Effective prior engagement with stakeholders will allay fears that might exist amongst TK owners concerning the role of the state in relation to their TK. Furthermore, it will contribute to minimizing the potential for conflict within and between TK communities over the ownership and protection of TK resources. Meaningful capacity building and outreach activities at the district and sub-national levels will be critical to the success of consultations that will follow at the national level (i.e. national workshops referred to in i) above) where the Bill will be subjected to wider public scrutiny in preparation for its passage through the parliamentary process.

iii) Database development. This activity aims to consolidate TK in a database so that it can be made available to and accessible by TK users. The provision of

tailored software and computer hardware and equipment, the upgrade of existing databases

and legal advice in connection to database developments will comprise the technical assistance to be rendered under this element.

iv) Regional Workshop for the Framework for Traditional Biological Resources, Innovations & Practices. The Framework received the endorsement of legal and environment officials as a final draft in 2006 and for adoption by member countries, by Trade Ministers in 2008. To assist member countries to develop draft legislation on this aspect of TK using the Framework as a guide, guidelines are presently being developed (through the commissioning of a consultancy) which will provide countries with policy and legal options to consider in the development of their TK legislation. The guidelines will be similar to those developed to assist countries in the implementation of the Model Law on TKEC. The Regional Workshop will provide an opportunity for member countries to be consulted in relation to the use of the guidelines. The Regional Workshop will also allow consultations on a draft regional arrangement for reciprocal recognition and enforcement and the preparation of an implementation plan of activities to bring the regional arrangement into full operation.

### **Phase II – Implementation of Activities in the medium-term (second 12 months)**

v) Cultural-mapping programme. This element of the Action Plan involves the deployment of field officers to gather and document TK. It will be the most costly activity to be undertaken under the Action Plan in terms of financial and human resources and, for that reason, is deferred to the second phase, to be implemented after a degree of progress with the activities set out in Phase I above is achieved. The scale of the human resource requirement will depend on the size and the needs of the country in question. Thus, it is to be expected that the provision of technical assistance under this element would differ for the Cook Islands, Kiribati, Palau and Vanuatu on the one hand, compared to Fiji, and to a much greater extent, PNG, on the other. An estimation of costs involved is yet to be determined and countries have been requested to provide an estimation of likely costs involved. As a guide, the Fiji Government established a cultural-mapping programme for a two-year period which involved the recruitment of field officers, training workshops, administrative expenses and equipment totalling \$FJD 1.8 million (\$USD 1.34 million). The programme covered only 3 of Fiji's 15 provinces and has been put on hold until further funding can be made available.

vi) Holistic programming. This element will involve the reform of broader contextual processes impacting the ability of TK legislation to attain its objectives. In particular, it will involve identification of potential legal and non-legal measures that might be utilized to support the effectiveness of TK legislation and

the management of TK resources more broadly. Activities envisaged under this element will include, where necessary, reform to intellectual property laws so that they are amenable to the objectives of TK law and policy, the role of customary law and practices and linkages to indigenous institutions. The Action Plan recognizes that the effective management of TK requires a multi-level approach that integrates with the broader context rather than promotes an over-reliance on one set of measures (e.g. legal measures) alone. Furthermore, a holistic approach recognizes the inability of one set of measures on its own, whether these are legal or non-legal, to achieve the overall objectives of the Action Plan. Each set of measures has its own limitations, requiring a combination of them to be adopted for maximum effectiveness to be achieved. It is also recognized that this element of the Action Plan will be critical to promoting an environment conducive for activities relating to the commercialisation of TK. Under this element of the Action Plan, a study will be commissioned to determine the scope, nature and costs of activities to be undertaken in the six beneficiary countries.

vii) Commercialisation of TK. This element of the project aims to assist countries develop market access opportunities in TK, including enhancing the work taking place in this area in the PIFS and other regional organizations. As a first step, a study will be commissioned to determine the scope, nature and costs of undertaking activities to promote the development of cultural industries at all levels in the community, from local village settings to industry level. The study will determine what countries' requirements will be for each stage of the production process, from the creation of TK-based products, compliance with standards and certification, marketing and distribution, amongst others.

viii) Implementation of the Regional Arrangement for Reciprocal Recognition And Enforcement. This element of the project will aim to assist member countries to make the regional system fully operational. The study alluded to in (iv) above will set out amongst other things a range of activities, including public awareness raising and training, that will be required to bring the regional system into effect.

### **Ongoing Technical Assistance**

ix) This element of the Action Plan involves the provision of ongoing advice to member countries by the PIFS and/or its partners. Ongoing legal advice will be provided by WIPO upon request by countries. The PIFS, in collaboration with its partners and in conjunction with the Pacific Islands Forum's Geneva Office, will be responsible for the provision of briefs for beneficiary countries at international meetings and for caucusing purposes with other like-minded regional groupings at WIPO, World Trade Organization (WTO) and the Convention on Biological Diversity (CBD). This process is a critical part of promoting the visibility of Pacific TK issues and activities at international forums and its reflection in evolving internationally binding instruments. It also bridges

the gap and thereby minimizes any potential risk of inconsistency of developments taking place in TK at national and regional levels with those evolving at the international level.

## **Outputs**

14. The expected overall output of the Action Plan is an effective and efficient system of protection and promotion of the region's TK systems and resources. Legal certainty of ownership and management of resources will be established, providing security and predictability for economic developments in business, technology and investment, local creativity and innovation. While the timelines below are indicative only, specifically, the Action Plan will result in:

- i) completion of six TK Bills to be considered by Parliament in the Cook Islands, Fiji, Kiribati, Papua New Guinea, Palau and Vanuatu by the end of 12 months;
- ii) completion of a draft legal arrangement for reciprocal recognition and enforcement at the regional level by the end of 12 months;
- iii) functional regional system of recognition and enforcement by the end of 24 months;
- iv) establishment of a modern national TK database by the end of 12 months;
- v) commencement of a cultural-mapping programme by the end of 18 months;
- vi) endorsement by the region's FIC Trade Ministers of the Draft Framework for Traditional Biological Resources, Innovations and Practices by the end of 12 months;
- vii) attendance of at least 3 FICs at meetings of the WIPO IGC;
- viii) increased number of FIC proposals at international fora on TK;
- ix) development of alliances with like-minded groupings at the WIPO IGC;
- x) on-going provisions of technical assistance to beneficiary countries;
- xi) completion of the study on reforms to promote a holistic approach and conducive context for TK legislation and beginning of implementation of the study's recommendations at the end of 24 months;
- xii) completion of the study to promote the commercialization of and market access opportunities for TK-based products; and beginning of implementation of the study's recommendations at the end of 24 months.

## **Implementation Update and Timeline for Activities**

15. See Attachment I for an update on the current status of implementing the Model Law on TKEC in the six beneficiary countries and their technical assistance requirements to progress its implementation. A timeline setting out the proposed time frame for each activity to be undertaken in-country will be developed in consultation with the six beneficiary countries.

### **Part III**

## **RESOURCE REQUIREMENTS**

The overall resource requirement for the project is estimated at USD\$570,400 (FJD\$905,440) for Phase I activities. An estimation of costs for activities for Phase II, i.e. cultural mapping programme, holistic programming activities, commercialization of TK and the implementation of a regional system of recognition and enforcement is still to be determined. With regard to the first-mentioned activity, (cultural mapping), an assessment of costs will be determined by countries themselves, while the latter three (holistic programming activities, commercialization of TK and the implementation of a regional system of recognition and enforcement), will be determined through studies to be undertaken to assess the nature, scope and costs of activities envisaged.

### **I. INPUTS BY WIPO**

i) WIPO is a key partner in the implementation of the project. The PIFS has requested that WIPO consider funding, in particular, the following activities which will focus on capacity building and outreach activities related to TK and Intellectual Property (IP) (see 13(i) and 13(ii) of Part II).

#### **Cook Islands**

- 11 Provincial/District-Level Consultations
- 2 National Workshops

#### **Fiji**

- 15 Provincial/District-Level Consultations
- 2 National Workshops

#### **Kiribati**

- 1 Workshop in North Tarawa
- 2 National Workshops

#### **PNG**

- 2 National Workshops

#### **Palau**

- 16 community consultations
- 1 National Workshop

#### **Vanuatu**

- 6 Provincial Consultations
- 1 National Workshop.

ii) WIPO will also provide advice, when requested, on all legal aspects of the Action Plan, including but not limited to legislation development, policy frameworks, regional enforcement and reciprocal recognition mechanisms, international dimension and database development.

## **II. INPUTS BY THE PIFS**

The PIFS contribution to the project will include the provision of legal and policy advice in connection to its mandated area of work and financial assistance to fund the consultancies relating to activities outlined in 13(i) and 13(ii) of Part II. PIFS will also cofund the development of Guidelines for the Draft Framework on Traditional Biological Resources, Innovations and Practices with SPREP. Subject to the availability of funding, PIFS will endeavour to fund a regional workshop to address the above-mentioned Guidelines as well as the cost of developing a draft regional reciprocal recognition and enforcement arrangement. As lead agency responsible for the project, the PIFS will assume all functions connected to coordination with member countries, the management of consultant contracts and the organization of consultations and workshops.

## **III. INPUTS BY THE SPC**

The PIFS has requested the SPC to assist with the provision of TK databases in the beneficiary countries (13(iii) of the Part II above). SPC is yet to confirm whether it will be in a position to undertake this responsibility. The SPC holds the lead agency role for the development of cultural industries at the regional level and, to that end, it will be commissioning a study to address the valuation of culture. While this activity is not formally reflected as part of the activities under this Action Plan, its direct relevance to, in particular, the Phase II activity that will address the commercialization of TK is recognized here. SPC will also provide legal and policy advice in connection with its mandated area of work.

## **IV. INPUTS BY SPREP**

SPREP has confirmed that it will co-fund the development of Guidelines to assist countries with the implementation of the Regional Framework on Traditional Biological Resources, Innovations and Practices with the PIFS. SPREP will also provide legal and policy advice in connection with its mandated area of work.



**Annex 3 | *Te Reo Maori Act 2003***



# Te Reo Maori Act 2003

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## COOK ISLANDS

### TE REO MAORI ACT 2003

#### ANALYSIS

##### Title

1. Short title and commencement
2. Interpretation
3. Act binds Crown

#### **Maori as an official language**

4. Maori to be an official language
5. Effect of declaration
6. Additional objectives and function of Ministry of Cultural Development

#### **Te Kopapa Reo Maori**

7. Establishment and membership of Te Kopapa Reo Maori
8. Functions of Kopapa Reo
9. Kopapa Reo to report annually to Secretary
10. Further provisions relating to Kopapa Reo

#### **Certificates of competency**

11. Kopapa Reo to grant certificates of competency
12. Qualifications for certificates of competency
13. Kopapa Reo to delegate power to grant certificates of competency
14. Complaints against holders of certificates of competency

#### **Miscellaneous**

15. Kopapa Reo to have regard to Government policy
16. Responsibilities of other persons unaffected
17. Money to be appropriated by Parliament for purposes of this Act
18. Protection of members of Kopapa Reo

- 19. Offence
- 20. Orders in Executive Council for Schedule 1 purposes
- 21. Regulations
- 22. Consequential amendments to Ministry of Cultural Development Act 1990 Schedules

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## 2003, No. 1

### An Act-

- (a) To declare Maori an official language of the Cook Islands; and
- (b) To establish Te Kopapa Reo Maori and define its functions and powers; and
- (c) To give the Ministry of Cultural Development additional objectives and functions.

(9 April 2003)

**BE IT ENACTED** by the Parliament of the Cook Islands in Session assembled, and by the authority of the same as follows:

1. Short title and commencement - (1) This Act may be cited as the Te Reo Maori Act 2003.

(2) This Act comes into force on 1 July 2003, unless it is earlier brought into force on a date appointed by the Queen's Representative by Order in Executive Council.

2. Interpretation - In this Act, unless the context otherwise requires, -

"Applicant" means a person who applies for a certificate of competency;

"Certificate of competency" means a certificate of competency issued under this Act;

"Communication", in relation to Maori, means-

- (a) The oral form of Maori;
- (b) The written form of Maori;

"Financial year" has the meaning given to it in section 2 of the Ministry of Finance and Economic Management Act 1995-96;

"Kopapa Reo" means Te Kopapa Reo Maori (the Maori Language Commission) established by section 7;

"Maori" -

(a) Means the Maori language (including its various dialects) as spoken or written in any island of the Cook Islands; and

(b) Is deemed to include Pukapukan as spoken or written in Pukapuka; and

(c) Includes Maori that conforms to the national standard for Maori approved by Kopapa Reo;

"Minister" means the Minister of Cultural Development;

"Ministry" means the Ministry of Cultural Development established by the Ministry of Cultural Development Act 1990;

"Secretary" means the Secretary of Ministry.

3. Act binds Crown - This Act binds the Crown.

### **Maori as an official language**

4. Maori to be an official language - Maori is an official language of the Cook Islands.

5. Effect of declaration - Nothing in **section 4-**

(a) Affects the status of English as an official language of the Cook Islands; or

(b) Affects any right that any person has, otherwise than by virtue of that section, to receive or impart any communication in Maori; or

(c) Affects the right of any linguistic or dialectal community in the Cook Islands to use the language or dialect of that community.

6. Additional objectives and functions of Ministry of Cultural Development-

(1) The Ministry has the following principal objectives:

- (a) To give effect to the declaration that Maori is an official language of the Cook Islands
- (b) To bring out a status for Maori that is equal to English in the Cook Islands.

(2) The Ministry has a principal function of assisting Kopapa Reo to carry out its functions and duties under this Act (including providing secretarial and administrative services to Kopapa Reo.

**Te Kopapa Reo Maori**

7. Establishment and membership of Te Kopapa Reo Maori - (1) This subsection establishes a commission to be called Te Kopapa Reo Maori (the Maori Language Commission).

(2) Kopapa Reo comprises the following members appointed by the Minister:

- (a) The person for the time being holding the position of Secretary of the Ministry of Cultural Development or another position within that Ministry nominated by the Secretary;
- (b) The person for the time being holding the position of Secretary of Education or another position within the Ministry of Education nominated by the Secretary of Education;
- (c) One person recommended by the House of Arikis;
- (d) One person who the Minister considers to be competent to represent the interests of women; and
- (e) One person who the Minister considers to be competent to represent the interests of youth.

(3) Kopapa Reo is not to be regarded as an advisory or technical committee for the purposes of the Ministry of Cultural Development Act 1990.

8. Functions of Kopapa Reo - Kopapa Reo has the following functions:

- (a) To create, and update as necessary, a national standard for Maori on matters such as phonics, grammar, vocabulary (including coining new words if necessary), orthography, and the alphabet;
- (b) To publish a notice in the *Cook Islands Gazette* and any other media considered appropriate when Kopapa Reo formally approves the standard or an update to the standard (such notice setting out where the copies of the standard or update can be purchased);
- (c) To act as the national authority on the standard;
- (d) Subject to **section 13**, to grant certificates of competency and perform the functions conferred by this Act relating to such certificates;
- (e) To advise the Ministry on what Kopapa Reo considers the most effective ways to give effect to the principle objectives and the principal function of the Ministry specified in **section 6**;
- (f) To consider, and report to the Secretary on, any matter relating to Maori that –
  - (i) The Secretary may from time to time refer to Kopapa Reo for its advice; or
  - (ii) Kopapa Reo considers necessary or desirable;
- (g) To perform any other functions conferred on Kopapa Reo by regulations made under this Act.

9. Kopapa Reo to report annually to Secretary - Kopapa Reo must, within one month of the end of each financial year, make a written report to the Secretary on its work during the financial year.

10. Further provisions relating to Kopapa Reo - The provisions in **Schedule 1** apply to Kopapa Reo and its affairs.

### **Certificates of competency**

11. Kopapa Reo to grant certificates of competency - (1) Kopapa Reo may grant certificates of competency for the following:

- (a) Competency in Maori or any dialect or branch of it;

(b) A specific competency (for example, interpretation or translation) in relation to Maori or any dialect or branch of it.

(2) On the payment of prescribed fees (if any), a certificate of competency must be granted to any applicant who satisfies Kopapa Reo that he or she is qualified to be the holder of such a certificate.

12. Qualifications for certificates of competency - For the purposes of determining whether or not an applicant is qualified to be the holder of a certificate of competency, Kopapa Reo must prepare, and publish in such manner as it thinks fit, standards and other criteria by which the relevant competency will be assessed.

13. Kopapa Reo to delegate power to grant certificates of competency - (1) Notwithstanding **section 11**, but subject to any regulations made under **section 21(1)(c)**, Kopapa Reo may from time to time delegate to any person the power to assess applicants and to grant certificates of competency.

(2) Subject to any directions given by Kopapa Reo, a person to whom Kopapa Reo delegates any power under this section may exercise that power in the same manner and with the same effect as if that power had been conferred directly by this Act and not by delegation.

(3) Kopapa Reo may not delegate a power under this section except

(a) By unanimous resolution of its members; and

(b) In accordance with regulations (if any) made under this Act.

(4) A delegation made under this section

(a) May be revoked by Kopapa Reo at any time (without requiring unanimous resolution of its members); and

(b) Does not prevent Kopapa Reo exercising the power delegated.

(5) Subject to the foregoing provisions of this section, Kopapa Reo must-

(a) As soon as Kopapa Reo finds a suitable person, delegate the power referred to in subsection (1) to that person; and

(b) As far as practicable, ensure that at any given time there is at least 1 person to whom that power is delegated.

14. Complaints against holders of certificates of competency - (1) Any person may lodge with Kopapa Reo a complaint against the holder of any certificate of competency on the ground that the holder has exhibited such incompetence as to call into question the holder's qualification to hold that certificate.

(2) Except where Kopapa Reo is satisfied that the complaint is frivolous or vexatious, Kopapa Reo must give or send a copy of the complaint to the person to whom it relates, and must give that person a reasonable opportunity to appear before Kopapa Reo, or (at that person's option) to make written submissions to Kopapa Reo, in answer to the complaint.

(3) If, after investigating any complaint under subsection (1), Kopapa Reo is satisfied that the person to whom the complaint relates is not qualified to hold the certificate of competency, it may-

(a) Cancel the certificate of competency; or

(b) Suspend the certificate of competency until such time as Kopapa Reo is satisfied that the person is qualified to hold the certificate.

(4) Kopapa Reo must, as soon as practicable after deciding to take any action under subsection

(3) give to the person concerned notice in writing of its decision and of the reasons for it.

(5) Where Kopapa Reo decides to cancel, suspend, or endorse a certificate, it must, in the notice given under subsection (4), require the holder to surrender the certificate to Kopapa Reo for appropriate administrative action.

### **Miscellaneous**

15. Kopapa Reo to have regard to Government policy - (1) In the performance of its functions under this Act, Kopapa Reo must have regard to the general policy of the Government in relation to Maori, as that policy is communicated to the Secretary from time to time by the Minister by notice in writing.

(2) As soon as practicable after receiving a notice under subsection (1), the Secretary must

(a) Forward a copy of it to Kopapa Reo; and

(b) Publish a copy of it in the Cook Islands Gazette.

16. Responsibilities of other persons unaffected - Nothing in any of the foregoing provisions of this Act affects any responsibility that any Minister of the Crown or any other person had immediately before the passing of this Act for any matter relating to Maori.

17. Money to be appropriated by Parliament for purposes of this Act - All remuneration, allowances, expenses, and other expenditure payable or incurred under or in the administration of this Act are payable out of money to be appropriated by Parliament for the purpose.

18. Protection of members of Kopapa Reo - (1) No member of Kopapa Reo is personally liable for any act done or omitted by the member in good faith in the course of the operations of Kopapa Reo.

(2) Any liability that would but for this section lie against a member of Kopapa Reo lies against the Crown.

19. Offence - Every person commits an offence and is liable on conviction to a fine not exceeding \$500 who, being required under **section 14(5)** to surrender to Kopapa Reo any certificate, fails without reasonable excuse to do so.

20. Orders in Executive Council for Schedule 1 purposes - The Queen's Representative may from time to time make an Order in Executive Council for the purposes of **clause 4(2)** or **6** of **Schedule 1**.

21. Regulations - (1) The Queen's Representative may from time to time, by Order in Executive Council, make regulations for all or any of the following purposes:

(a) Prescribing fees in respect of-

(i) The conducting of examinations for certificates of competency;  
and

(ii) Applications for, and the issuing of, certificates of competency;  
and

(iii) Any other service provided by Kopapa Reo in respect of applications for certificates of competency;

(b) Prescribing the procedures to be followed in respect of applications for certificates of competency;

(c) Restricting or otherwise regulating Kopapa Reo's power to make a delegation under section 13;

(d) Providing for such other matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

(2) No regulation may be made under subsection (1)(a) or (b) except on the advice of the Minister tendered on the recommendation of Kopapa Reo.

22. Consequential amendments to Ministry of Cultural Development Act 1990 - The Ministry of Cultural Development Act 1990 is consequentially amended in the manner indicated in Schedule 2.

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This Act is administered in the Ministry of Cultural Development.

## **SCHEDULE 1**

### **Section 10**

#### **PROVISIONS APPLYING TO KOPAPA REO AND ITS AFFAIRS**

##### **1 Term of office of members**

(1) Every member of Kopapa Reo must be appointed for a term not exceeding 3 years, but may from time to time be reappointed.

(2) A member may resign at any time by notice in writing addressed to the Minister.

(3) The following are deemed to have vacated office as a member:

(a) A member who is absent from 3 consecutive meetings of Kopapa Reo without its leave;

(b) A member appointed under section **7(2)(a)** or **(b)** by virtue of holding a position, who, for any reason, ceases to hold the position.

(4) The Minister may at any time remove any member from office for inability to perform the functions of the office, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister.

(5) Every member, unless the member dies, or resigns, vacates, or is removed from office, continues to hold office until the member's successor comes into office notwithstanding the expiry of the term for which the member was appointed.

(6) The functions and powers of Kopapa Reo are not affected by any vacancy in its membership.

## **2 Chairman and Deputy Chairman**

(1) The Minister must from time to time appoint 1 member of Kopapa Reo its Chairman.

(2) At its first meeting in each year, Kopapa Reo must elect another of its members to be its Deputy Chairman.

(3) A member who holds the office of Chairman or Deputy Chairman continues in office until his or her successor is appointed or elected under subclause (1) or (2) of this clause, and is eligible for reappointment or re-election.

(4) A member who holds the office of Chairman may at any time -

(a) Be removed from the office of Chairman by the Minister; or

(b) Resign his or her office by giving a notice to that effect to the Minister.

(5) A member who holds the office of Deputy Chairman may at any time-

(a) Be removed from the office of Deputy Chairman by Kopapa Reo; or

(b) Resign his or her office by giving a notice to that effect to Kopapa Reo.

(6) If a person who holds the office of Chairman ceases to be a member of Kopapa Reo, the Minister must appoint 1 member to fill that vacancy in the office of Chairman as soon as reasonably practicable.

(7) If a person who holds the office of Deputy Chairman ceases to be a member of Kopapa Reo, Kopapa Reo must elect 1 member to fill that vacancy in the office of Deputy Chairman as soon as reasonably practicable.

## **3 Deputy Chairman may act for Chairman**

(1) The Deputy Chairman of Kopapa Reo has and may exercise or perform all the functions, duties, and powers of the Chairman of Kopapa Reo if-

(a) The Chairman is at any time incapable of acting as Chairman because of illness, absence, or any other reason; or

(b) There is a vacancy in the office of Chairman.

(2) The Deputy Chairman must, while acting for the Chairman, be regarded as the Chairman.

(3) No act done by the Deputy Chairman while acting for the Chairman and no act done by Kopapa Reo while the Deputy Chairman is acting for the Chairman, may in any proceedings be questioned on the ground that the occasion entitling the Deputy Chairman to act had not arisen or had ceased.

#### **4 Meetings of Kopapa Reo**

(1) Subject to clause 3 and the succeeding provisions of this clause, the Chairman must-

(a) Convene such meetings of Kopapa Reo as the Chairman thinks necessary for the efficient performance of the functions of Kopapa Reo; and

(b) Appoint the time and place at which the meetings are to be held; and

(c) Preside at all meetings of Kopapa Reo.

(2) The Chairman must convene meetings at such frequency as determined from time to time by the Queen's Representative by Order in Executive Council, or, in the absence of such an order, at the frequency of at least 1 meeting in each month.

(3) Any 2 members may at any time call a special meeting of Kopapa Reo by giving each member for the time being in the Cook Islands a written notice stating-

(a) The time and place of the meeting; and

(b) The business to be transacted at it.

(4) The members must be given-

(a) At least 7 days' notice of the special meeting; or

(b) If they are satisfied that the business to be transacted is urgent, any shorter period of notice to which all members entitled to be notified agree.

(5) No business other than that specified in a notice of special meeting may be transacted at a special meeting.

(6) At any meeting of Kopapa Reo, the quorum necessary for the transaction of business is 3 members.

(7) All questions arising at any meeting of Kopapa Reo must be decided by a majority of votes of the members present and voting.

(8) The presiding member has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(9) The members present must appoint 1 of their number ("the appointee") to preside at a meeting if-

(a) The Chairman and Deputy Chairman are not present; or

(b) There is no Chairman and no Deputy Chairman.

(10) The appointee must, while presiding at the meeting, be regarded as the Chairman.

(11) No act done by the appointee while presiding at the meeting and no act done by Kopapa Reo while the appointee is so presiding, may in any proceedings be questioned on the ground that the occasion requiring the appointment to be made had not arisen or had ceased.

(12) Kopapa Reo may meet in private or in public, as it from time to time decides.

(13) Kopapa Reo must cause such notice as it thinks fit to be given of a public meeting of Kopapa Reo to persons likely to be interested in the subject matter of the meeting.

(14) Subject to the provisions of this Act, Kopapa Reo may regulate its procedure in such manner as it thinks fit.

## **5 Assent to resolution without a meeting**

(1) A resolution in writing signed, or assented to by letter, telegram, cable, telex, or email, by every member of Kopapa Reo is as valid and effectual as if it had been passed at a meeting of Kopapa Reo duly called and constituted.

(2) Subclause (1) of this clause does not apply unless the Chairman has endorsed the resolution to the effect that the signature or assent of members is being obtained in that way due to exceptional circumstances that, in the Chairman's opinion, require urgent action.

## **6 Remuneration, allowances, and expenses of members of Kopapa Reo**

(1) Members of Kopapa Reo must be paid such remuneration, allowances, and expenses as determined from time to time by the Queen's Representative by Order in Executive Council.

(2) The determination

(a) May be made either generally or in respect of any particular member or members of Kopapa Reo;

(b) Takes effect on such date (whether the date of the determination or any earlier or later date) as may be specified in the Order in Executive Council.

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## **SCHEDULE 2**

### **Section 22**

#### **CONSEQUENTIAL AMENDMENTS TO MINISTRY OF CULTURAL DEVELOPMENT ACT 1990**

### **Section 2**

By inserting, in the appropriate alphabetical order, the following definitions:

"Financial year" has the meaning given to it in section 2 of the Ministry of Finance and Economic Management Act 1995-96;

"Kopapa Reo" has the meaning given to it in section 2 of the Te Reo Maori Act 2003."

By adding the following subsection:

"(2) In section 9, the expression "this Act" includes the Te Reo Maori Act 2003."

#### **Section 4**

By inserting, after subsection (1), the following subsection:

"(1A) In addition, the Ministry has the principal objectives specified in section 6(1) of the Te Reo Maori Act 2003."

By inserting, after the words "shall be" in subsection (2), the word "to".

By inserting, after the expression "AudioVisual Recording Unit" in paragraph (d) of subsection (2), the expression "and Tuanga Reo (as established by regulations made under this Act)".

By inserting, after subsection (2), the following subsection:

"(2A) In addition, the Ministry has the principal function specified in section 6(2) of the Te Reo Maori Act 2003."

#### **Section 28**

By inserting in subsection (1), after the words "the Ministry", the words "and the work of Kopapa Reo".

#### **Sections 8, 10(1), and 11**

By omitting the expression "Public Service Act 1975", and substituting the expression "Public Service Act 1995-96".

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Publisher

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